Central Law Journal.

ST. LOUIS, MO., AUGUST 1, 1913.

LINE OF DEMARCATION IN DELEGATION OF LEGISLATIVE POWER TO A COMMISSION AND VESTING IT WITH ADMINISTRATIVE FUNCTIONS.

Often it is difficult to say whether or not a municipality or a commission has been given merely administrative powers or in addition there is attempted to be conferred power to legislate as a basis or further guide in the execution of its functions. Merely the fact that there is something, in final analysis, of legislative discretion in a state agency may not be conclusive of this question, as is well shown in Bradley v. Richmond, 33 Sup. Ct. 318, affirming S. C. 110 Va. 521, 66 S. E. 872.

In this case there was a statute which authorized municipalities to tax business and occupations and it was held that there was lawful power in a city by ordinance for classifying, with those in each class to pay the same tax.

It also has been held that there was no unconstitutional delegation of power to a board of agriculture, by a statute forbidding sale of illuminating oils, not safe, pure nor affording a satisfactory light, to determine what oils come up to these standards. Red "C" Oil Mfg. Co. v. Board, etc., 222 U. S. 380.

It also has been held that where a statute provides for a uniform system of public accounting, certain named officers could prescribe forms for the accounts of each public officer, such prescribing not empowering these officers to perform a legislative function. Blue v. Smith (W. Va.) 72 S. E. 1038.

Much more could be cited along this line, but these illustrations seem to show that for legislation to have absolute need of further action by a municipality, or board or an official, to put it into operation, is not a test of its validity—that is, not always a necessary test. In the case of the ordinance above considered, the statute merely vested a power; in the other cases, there was devolved a duty, enforceable, possibly, by mandamus.

With these rulings in mind we read the opinions by three members of Division No. 1 of Missouri Supreme Court, in the case of Nalley v. Home Ins. Co., 157 S. W. 769, with much misgiving, indeed, with positive dissent to one of the propositions, to which all three agree.

The principal opinion quotes a section of a Missouri statute which requires fire insurance companies "to agree upon a uniform form of policy * * * covering the responsibilities of the companies as well as the duties of the assured," which, when approved by the insurance commissioner, shall be used by them for all business in the state. There is to be attached to each policy a certain form of notice to be used in case of loss and it is required that every policy shall be upon an incontestable three-fourths valuation. The title of the Act reads: "An Act relating to fire insurance and forms of policies."

This opinion, following what it deemed apt cases, from two of which quotation is made *in extenso*, held that there was here an unconstitutional delegation of legislative power to the insurance commissioner, but this part of the Act was separable. We are not concerned here with the separable idea, but only with the ruling regarding the constitutionality of this part of the statute.

We may premise, that, if there is any force in the so-many-times-repeated principle, that a statute should be upheld as constitutional unless it is clearly otherwise, one like this certainly deserves its saving power, and with this in view we take up the two cases the opinion strongly relies upon for support.

The first of these cases is O'Neill v. Ins. Co., 166 Pa. 72, 30 Atl. 943, 26 L. R. A. 715, 45 Am. St. Rep, 650. The act there considered directed the commissioner to prepare and file by a certain date a "form in blank of contract or policy together with

such provisions, agreements or conditions as may be indorsed thereon or added thereto," this to be the standard fire insurance policy of Pennsylvania. Further that provisions of the standard policy shall be carried into all policies. Rightly the Pennsylvania court held that this policy, with such provisions as the commissioner should put into it, was the measure of the rights and liabilities of insured and insurer. This conclusion seems necessary, but not so as to policy framed under the Missouri statute. But we come to this later on.

The other case greatly quoted from was Dowling v. Insurance Co., 92 Wis. 1. c. 73, 65 N. W. 741, 31 L. R. A. 112. The statute was precisely like that of Pennsylvania, with the added injunction that the form of policy should, as near as may be, conform to the type and form of the New York standard fire insurance policy. This was held not to save the power from being legislative. We think, however, that all will agree that, had the commissioner prescribed a form utterly different from the standard mentioned, it would not have bound the assured, because such inconsistency was beyond the power of the commissioner to create.

But in both of these statute there stands out boldly the idea that the commissioner may create conditions and limitations in the way of an interference with the right of contract between assured and insurers, and force them upon companies before they could do business at all. This does not so stand out in the Missouri law. The only word carrying this idea is that policies shall be "uniform" as covering responsibilities of companies and duties of assured, but this does not say that all other responsibilities or duties must be set forth, e. g., those necessarily inhering in a contract of insurance, either by statute or common law. Certainly the form could not say that there could not be a waiver, where statute said there should be, nor that value stated should be questioned. The same statute provided as to these things and there was no implied repeal of any prior statute in regard to any other matters.

This being so, the measure of rights of insured and insurers was not intended to be fixed by the arrangement for a uniform policy, but there was more a direction to furnish an office form of paper for insurance in Missouri, to be governed by the law of contract in that state.

With this view the rule of saving a statute is observed, the commissioner's power rising no higher than that of an intelligent ministerial officer neither attempting to repeal existing statute nor the common law. Should there be attempt to do more, any company could require the commissioner, by mandamus, to keep within the limit of his power and approve a proper policy, so as to keep its business from having a sort of cloud over the way it was being or to be conducted.

We think also there is some difference in Missouri statute and the other two statutes arising out of the way the forms are to be prepared. The fact that companies may agree upon a form to be submitted for approval tends to show that all existing regulations and limitations must be observed, and wherein these are transcended the form is not to be respected.

NOTES OF IMPORTANT DECISIONS

PATENTS—RIGHT OF PATENTEE TO FIX PRICE IN RESALE OF PATENTED ARTICLE.—The Supreme Court in the case of Bauer & Cie. v. O'Donnell, 33 Sup. Ct. 616, holds that the word "vend" in the patent statute means the same thing as in the copyright law and therefore that the principle in Bobbs-Merrill Co. v. Straus, 210 N. S. 339 should be followed. This ruling denies to patentee the right to limit the price at which a patented article may be resold.

It is to be noticed that the opinion by Justice Day distinguishes this case from Henry v. Dick Co. 224 U. S. 1, which was decided by a majority of four to three, Justice Day being absent and Justice Pitney not yet having come upon the bench. It is hardly to be

supposed, nowever, that the distinction is satisfactory to a majority of the Court, for the same four whose vote ruled in the Dick case dissented, and the three who dissented in the Dick case did not consider there was any right of limitation by a lessor of the use. What Justice Pitney, who agrees with the majority in the O'Donnell case, thinks on this subject is not revealed.

WORKMEN'S COMPENSATION ACT—DISABILITY AS MEASURED BY EFFECT ON EARNING POWER.—There is a new source of supply of judicial decision in Workmen's Compensation legislation and a case decided by Wisconsin Supreme Court suggests that an optional law is to be preferred for a free interpretation of the provisions of this yet untried legislation in a judicial sea where it may be engulfed in a Charybdis of unconstitutionality or wrecked upon some Scylla of construction. If an act has been accepted by employer and employee it will be made to stand, if courts possibly may spell out any plan for its survival. In this case an objection for unconstitutionality was disposed of by the court saying: "It was optional with the appellant to come in under the compensation act or stay out. . . . So long as it remains under the law it must take it as it finds it." Mellen Lumber Co. v. Industrial Commission, 142 N. W. 187.

The question was whether total disability meant complete inability to further follow the pursuit in which the employe was injured, or inability to earn a livelihood in any gainful labor. In this case the employe was a shingle sawyer and he lost the thumb and index finger of his left hand. Thereby he was totally incapacitated from following his occupation of a shingle sawyer, but the commission found that "there are many occupations open to applicant where he can earn a good wage, and we have little doubt that he will find his place as a useful self-supporting member of society." The commission awarded the total disability rate and this the court affirms.

This ruling is placed upon the verbiage of the statute—"impairment of his earning capacity in the employment in which he was working at the time of the accident." Literally taken, these words support the court's conclusion, but if thus taken quite nearly every mutilation for the way it leaves its effect on one might amount to a total disability, or, at least, the law would operate in a vastly different way as to different employments, while it ought to operate as nearly uniformly as possible. Thus take the instant case and it is merely incidential that the employe must have both of his hands in perfect condition, while in another this might not be so serious, and yet, generally, he would be as badly injured. Therefore the word "employment" in the statute ought rather to be deemed employment as a laborer—not employment in the doing of a special thing as a laborer. Thus this employe might do other things in and about shingle sawing, but not all of the things he did before. He could bring material to the saw, or remove it therefrom, or generally assist a two-handed sawyer, or be put to work in another part of a sawmill at less wages. A laborer, who is master of a particular trade, ought to have no particuliar preference under a law intended reasonably to compensate him for injury over another, who may happen to be working in a particular way when he is injured. And this seems all the more true when it is seen that the basis of compensation is rested upon wages paid and less ability afterwards to earn them. It seems absurd to say that one not further able to ply his trade because he loses a finger on his left hand should be deemed totally incapacitated when this interferes in no great way with his general capacity. Injury to no one else is estimated in any such way. A leg is more than a finger and yet, if this sawyer had lost a leg, he might have recovered less than for the thumb and finger of his left hand. It is violent construction of a statute so to think.

WORKMEN'S COMPENSATION LAW — WAIVER BY EMPLOYEE UNDER OPTIONAL LAW.—The Supreme Court of Rhode Island applies the waiver provision of Massachusetts workmen's compensation law to a suit upon an injury occurring in that state. Pendar v. H. & B. Am. Mach. Co., 87 Atl. 1.

This law provided that when an employer was a "subscriber" thereunder and should give notice of such fact by posting on his premises, any employee at the time of hiring might give notice in writing that he would claim a right of action at common law to recover damages for personal injuries and failing so to do, he should be held to waive his right of action at common law. The defendant pleaded that it was a subscriber, had posted its working place to this effect and that plaintiff had never given the notice required to preserve his action at common law. A demurrer to this plea was overruled and judgment was entered for defendant. Massachusetts decision was cited

that the provision in regard to notice left it to the employee's option to waive or not waive his right of action at common law. Opinion of the justices, 209 Mass. 607, 96 N. E. 308.

It is easily seen that this option is quite a barren right, for, if it was not made, the employee would hardly have the ghost of a chance to continue in his employment.

This case is a practical illustration of the fact, that there is no earthly use in having any legally compulsory feature in this kind of legislation, unless some way is sought to compel employers to come under the act. This also may be thought to be accomplished by the Massachusetts statute, which takes away from a non-subscribing employer the right to set up the defense of contributory negligence, assumption of risk or to show that the injury was caused by the negligence of a fellow servant. Under these circumstances the employer's choice is of the Hobson variety just as much as that of the employee.

WHAT THE NEW COMMITTEE ON UNIFORM JUDICIAL PROCEDURE HAS DONE.

No committee of the American Bar Association is charged with the carrying out of a more interesting and important programme than that of the newly-created committee on Uniform Judicial Procedure.

At the 1912 meeting of the Association, a resolution was unanimously adopted in the following words:

"Whereas, § 914 of the Revised Statutes has utterly failed to bring about a general uniformity in Federal and State proceedings in civil cases; and

"Whereas, It is believed that the advantages of state remedies can be better obtained by a permanent uniform system, with the necessary rules of practice prepared by the United States Supreme Court;

"Now, Therefore, be it and it is hereby resolved;

"First: That a complete uniform system of law plodding should prevail in the Federal and State Courts;

"Second: That a system for use in the Federal Courts, and as a model with all necessary rules of practice or provisions therefor, should be prepared and put into effect by the Supreme Court of the United States;

"Third: That to this end § 914 and all other conflicting provisions of the Revised Statutes should be repealed and appropriate statutes enacted;

"Fourth: That for the purpose of presenting these resolutions to Congress and otherwise advocating the same in every legitimate manner, there shall be appointed a committee of five members to be selected by the President, to be known as "The Committee on Uniform Judicial Procedure."

The committee on "Judicial Administration and Remedial Procedure" to which the resolution was referred at the Boston meeting in 1911, in favorably reporting it, made a comment and a prediction, the repetition of which will serve the end of giving brief expression to the two objects sought and the reason for the creation of the committee:

"The subject-matter of the resolution is one of great importance. It is true that § 914 of the Revised Statutes has failed to bring about any uniformity in proceedings in civil cases. It is true that uniformity in this respect is most desirable and the inference drawn from the resolutions seems to your committee justifiable, namely: That if a complete uniform system of law pleading and procedure should prevail in the Federal Courts—a system carefully modeled by the Supreme Court of the United States—it would in time induce the several states to adapt their own systems of pleading to such model."

President Frank B. Kellogg appointed on this committee, Hon. Thomas W. Shelton, Norfolk, Va., chairman; Hon. Jacob M. Dickinson, Nashville, Tenn.; Hon. W. B. Hornblower, New York City; Hon. Louis D. Brandeis, Boston, Mass.; and Hon. Joseph H. Teal, Portland, Oregon.

Immediately upon the designation of the personnel by President Kellogg, an organization was perfected, a statute prepared with the advice and assistance of Judge Henry D. Clayton, Chairman of the Judiciary Committee of the House of Representatives and by him introduced in the Sixty-second Congress, on December 2, 1912, as House Bill No. 26462, in the following words:

"A BILL To Authorize the Supreme Court to Prescribe Forms and Rules and Generally to Regulate Pleading, Procedure and Practice on the Common Law Side of the Federal Courts.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court shall have the power to prescribe, from time to time and in any manner, the forms and manner of service of writs and all other process; The mode and manner of framing and filing proceedings and pleadings; of giving notice and serving process of all kinds; of taking and obtaining evidence; drawing up, entering and enrolling orders; and generally to regulate and prescribe by rule the forms for the entire pleading, practice and procedure to be used in all actions, motions and proceedings at law of whatever nature by the District Courts of the United States."

There may be some minor changes made, but there is justification for the prediction that the "Clayton Bill" when it becomes a law, will unquestionably vest in the Supreme Court of the United States the necessary power, with the corresponding duty, to prepare and put into effect on the common law side of the inferior Federal Courts a complete, simple, expeditious, correlated system of rules without further legislation in any respect. It will also have the right to promptly perfect the rules at the demand of justice or the call of convenience. The right to make improvements is of equal importance to the power to make the rules.

The bill and the entire programme have been favorably endorsed and supported by ex-President Taft, the Vice-President, the Attorney-General, over forty Governors of States, the Conference of Commissioners of Uniform State Laws, the National Civic Federation, the members of the Executive Committee of the Association of Law Schools the Bar Associations of the States of New York, Massachusetts, Alabama, Oregon, Maryland, Mississippi, Virginia, South Dakota and many others, as well as by many county and city organizations; by teachers like Dr. Henry Wade Rodgers, Professor Roscoe Pound, Dean Wm. M. Lile and Dean Wm. R. Vance. The National Association of Credit Men, one of the largest commercial organizations in the United States, endorsed the programme and authorized the appointment of special committees in each state to aid in the campaign. Committees appointed by the Governors of the States and President of State Bar Associations, at the request of your committee, have been most active in setting forth the merits of the bill and in pressing upon Congress and the Chief Executive the urgent necessity of prompt action. These committees make up a most convenient and mobile organization. It is intended that they shall continue after Congress and the Supreme Court have acted, for the useful purpose of bringing about the adoption of the new Federal system in their respective States.

The enactment of the Sixty-second Congress was frustrated by an impeachment proceeding that took up the greater portion of the time and thought of the Judiciary Committee of the House, so that Congress adjourned on March 4th, 1913, without a hearing before that Committee. Promptly, upon the convening of the extra session of Congress, on April 10th, 1913, Judge Clayton again introduced the measure as H. R. No. 133, and Senator Charles A. Culberson, Chairman of the Senate Judiciary Committee, introduced the bill in the Senate. The history of the extra session of Congress and its devotion to two prominent issues, being quite fresh in mind, it is hardly necessary

to make explanation or apology for lack of success.

As the matter now stands, seeing that the special session would adjourn without consideration of the Bill, arrangements have been perfected for its introduction into both Houses immediately upon the convening of the next regular session, and hearings by the two Judiciary Committees almost immediately thereafter. It could become a law before adjournment for the Christmas holidays, unless there arise some unexpected and unforeseen lukewarmness or opposition. While President Wilson has not been afforded the opportunity of officially evidencing his sympathy, we have reason to believe that he is in favor of this measure. In President Taft's message to Congress in December, 1912, he wholly endorsed the principles embodied in the Bar Association's resolution creating this committee. At all times he has notably, forcibly and freely fought for the cause of reform and uniformity of judicial procedure. It is difficult to measure the extent of the obligation of the Association and its Committee to that great statesman, lawyer and judge.

It should be determined in advance by lawyers all over the country that as many communications as possible be sent to the law-makers at Washington and that the complaints of the dissatisfied be converted into concrete and persistent demands for immediate action by Congress. Satisfactory results are bound to follow such a campaign. There never was a time when reform in judicial procedure was so persistently demanded, nor when society and commerce could intelligently participate. They have but to follow a fixed programme.

The most important development of the Committee's campaign is the "Conference of Judges" arranged for Saturday, August 30th, at 8 p. m. The Chief Judge of the highest Appellate Court of each State, the Senior Circuit Judge of each Federal Circuit and the Chief Justice of the Court of Appeals of the District of Columbia have been invited to take part in the meeting of this Committee and nearly all have accepted. There will be no fixed programme except a few short informal addresses appropriate to the occasion and in keeping with the distinguished company. Each judge will be expected to offer such suggestions and make such comment as appeals to his good judgment. This is the very first effort to consider in convention interstate judicial relations—to promote uniformity of law with uniformity of decision and to foster uniform pleadings and procedure. The growth of interstate judicial relations may be as deliberate as that of interstate commercial relations, but this conference makes the beginning of a new era full of promise, as it evidences a feeling of good will and mutual tolerance characteristic of the big, broad-minded men who compose the judiciary of this country. Those elements are its salvation and its strength and give promise of rapid progress. The earnestness and unselfish patriotism displayed by the judges in accepting the invitation of the Bar Association to give the Committee the benefit of their invaluable aid and advice deserve the highest appreciation. It will add dignity and strength to its campaign. The "Conference" is the result of one of the many and enthusiastic efforts and the prediction is ventured that it will prove the distinguishing feature of this administration as it ought to prove a permanent feature of each annual meeting of the Association.

The entire committee, and especially the indefatigable chairman, Mr. Shelton, with whom our readers have already become acquainted in these columns, deserve great credit for the clear, definite and comprehensive programme they have devised and are carrying out. They have taken an important issue from the clouds of indiscriminate discussion and given it a right of way and a clear road ahead to an ultimate solution.

A. H. ROBBINS.

St. Louis, Mo.

CORPORATIONS—MISUSE OF CORPORATE FUNDS.

HAVANA CENT. R. CO. v. CENTRAL TRUST CO. OF NEW YORK.

Circuit Court of Appeals, Second Circuit. March 31, 1913.

201 Fed. 546.

The treasurer of a corporation having an active deposit account in defendant bank drew checks against the deposit, signed by himself as treasurer, payable to himself or another, and, having indorsed them, deposited them to his individual account in another trust company, which presented them to defendant, which paid them without question. The treasurer had no right to the checks and his action in drawing them amounted to a criminal appropriation of the corporation's funds. So far as defendant was concerned, however, there was nothing suspicious about the checks, except that they were drawn by the corporation's general fiscal officer to his own order and indorsed by him, and other similar checks had been drawn and paid before, and defendant had no knowledge that the checks were being used for the treasurer's personal benefit. Held, that defendant was not charged with notice, from the mere fact that the checks were drawn to the treasurer's own order, that they were being improperly used, and hence was not liable to repay the amount to the corporation.

The following is an outline of the facts particularly relevant to the principal questions of law discussed in the opinion:

On February 23, 1906, C. W. Van Voorhis, treasurer of the plaintiff, the Havana Central Railroad Company, opened a deposit account in its name with the defendant, the Central Trust Company. The account became active, further deposits were made and checks were drawn up it signed "Havana Central Railroad Company, C. W. Van Voorhis, Treas." Among the checks so drawn and signed were three upon which this action is based. These checks were for $26,461.81, $21,944.55 and $15,000, respectively and were payable to W. M. Greenwood or C. W. Van Voorhis. They were indorsed by said Van Voorhis and not by said Greenwood; were deposited in the individual account of the former in the Knickerbocker Trust Company; were presented by that Company to the defendant and were paid by it. Said Van Voorhis had no right to such checks and his acts in drawing them amounted to a criminal misappropriation of funds. The action was based upon an alleged breach of duty upon the part of the defendant in paying the checks.

Before Lacombe, Ward and Noyes, Circuit Judges.

NOYES, Circuit Judge (after stating the facts as above). Upon the trial the plaintiff claimed that the form, face and contents of the checks were, as a matter of law, such as to put the defendant upon inquiry. The trial court ruled that the question was one of fact for the jury and the assignment of error based upon this ruling brings up the primary question in the case; a question which, as affecting the duties of banking institutions, is of far-reaching importance. . . .

The relation existing between a bank and its customers growing out of the general deposit and the withdrawal of moneys is that of debtor and creditor and the courts, both in England and in America, have uniformly resisted all efforts to hold the bank as trustee, quasi trustee, factor or agent. 1 Morse on Banks and Banking (4th Ed.) § 289. The parties deal at arms' length. This is true with respect to the nature of the deposit. It is well settled that all sums paid into a bank by different depositors form one blended fund and that the depositor has only a debt owing to him by the bank and not a right to any specific moneys. So, on the other hand, when the deposit is made, nothing short of payment will discharge the bank; the loss of the specific moneys deposited is immaterial. And in respect of the payment of checks, it is the duty of the bank when a properly drawn check is presented to pay it if there are sufficient available funds. But the bank does not make payment because it is the trustee or agent of the depositor. It makes it to discharge pro tanto the simple debt which it owes the depositor who by his check gives acquittance for it. When a corporation opens a deposit account with a bank the latter must be satisfied that the officer signing checks is authorized to do so and if it pay without question it takes the risk of being held liable for the amount irregularly paid away. But the bank assures itself of the authority of the corporate officers for its own protection in discharging its indebtedness to the depositor and not as the agent of the latter. We think that it is not correct to say that a depositary bank is the agent of the depositor to determine whether a check drawn conforms to the contract between them. It rather determines the question at its peril.

Not accepting then the proposition that the obligation of the defendant bank to the plaintiff was that of an agent, and looking at the

case without regard to the previous litigation, we come to the inquiry whether, upon the facts and circumstances of this case, the defendant was put upon inquiry by the checks in question. So far as this defendant was concerned there was nothing suspicious about the checks except that they were drawn by the general fiscal officer to his own order and were indorsed by him; other similar checks had been drawn and paid before. The defendant did not know the history of the checks. It did not have the knowledge of the Knickerbocker Company that the treasurer was using the checks for his personal benefit. That which it knew was that which appeared on the checks themselves when presented for payment. It appeared that the treasurer might have been guilty of a breach of trust and have been attempting to misappropriate the moneys of his corporation. On the other hand there might have been no breach of trust. The checks might have been drawn in favor of the treasurer for entirely legitimate corporate purposes. Transactions were disclosed which might or might not have been breaches of trust according to circumstances unknown to the defendant. In such circumstances, we think that it was not the duty of the defendant to question the checks and that the language of Judge Hammond in Walker v. Manhattan Bank (C. C.) 25 Fed. 247, 255, upon an analogus subject, is applicable:

"At all events the bailee must know that the contemplated appropriation is a breach of trust, not merely that a certain transaction is about to be consummated, which may or may not be a breach of trust, according to circumstances unknown to him."

It must be observed that we are far from holding that a bank is free under all circumstances to pay without question checks drawn by corporate officers to their own order. While a bank may deal with its depositors at arm's length, it must take care to pay out their moneys only upon authorized orders. If it fail to use due care it may be required to pay again. Consequently while in case of a corporate check signed by an officer with express or implied authority, the mere fact that it is drawn to his own order and therefore may be improperly used will not require the bank to question it. But if the bank have knowledge that the officer is using the check for his personal benefit, e. g. to pay his debt to the bank or to deposit it to his personal credit, then the bank is put upon inquiry and if it fail to make it, pays at its peril. But the bank owes this obligation not because it is the representative of the depositor but because it has no right to discharge its debts to its depositors except on their authorized orders and a check misused by a corporate officer cannot be regarded by a bank having notice of its misuse as an authorized order.

It must also be observed, from another point of view, that to relieve a bank from questioning the validity of checks in the form under consideration, works no real injustice to corporation depositors. Corporations may protect themselves by requiring counter-signatures provided they notify the bank of the requirement. If they do not choose to do so it may fairly be presumed that they prefer the risk to the inconvenience. In such circumstances, it is not unfair to the depositor to say that if the bank have notice or knowledge of wrongdoing it must make inquiry, but that if nothing wrong in the history of a check is brought to its attention, it is not called upon to inquire about it; that a bank is not bound to question every corporate check regardless of amount—and manifestly no line can be drawn—merely because it is drawn by a corporate officer to his own order.

For these reasons, we think that as a matter of law upon the undisputed facts the defendant was not put upon inquiry by the face, form and contents of the checks and that the trial court, in submitting the question to the jury, gave the plaintiff more favorable instructions than it was entitled to. This conclusion disposes of the principal question in the case and renders unnecessary the consideration of the subsidiary questions relating to the defendant's duty if put upon inquiry and to the plaintiff's negligence. It also deprives of any prejudicial effect the rulings upon the examination of one of the plaintiff's officers.

NOTE.—*Inquiry Suggested by Check or Note of Corporation Payable to Officer Issuing Same.*—The instant case does not seem to consider the check, which is spoken of, as standing in any different way than had it been presented to and paid by drawee bank and there cashed instead of being placed to payee's account. Had this been done, the drawee bank would have been liable. The cases we submit may be said generally to go upon the principle that what fairly would arouse suspicion ought to have that effect. Here was a case where a bank of deposit calls on drawee bank. Ought not the latter to have inquired into the relation of the officer of the former and if it found that he was depositing the check to his private account, should it not have prevented this or arrested benefit thereunder?

In Hebberd v. Southwestern L. & C. Co., 55 N. J. Eq. 1, 36 Atl. 122, the question was allowing or not a note signed by the president of a

corporation payable to his own order and discounted by a bank and placed to his credit, as a claim in favor of the bank against assets of the corporation in the hands of a receiver. At the time the note was presented for discount, the president exhibited to the bank a letter addressed to him upon the letter head of the company and signed by a party thereon stated to be "in charge," which letter stated that the corporation was indebted to the president $10,438.36, and the note presented for discount was for $10,000.

As a matter of fact, the company owed its president only $55. In ruling the claim to be allowable it was said: "It is true, upon its face the note appeared to be drawn by the president to his own order and the proceeds of the discount were used by the president to open an account in the discounting bank in his individual name. These are circumstances which challenge the good faith of the bank in the transaction; but when they are considered in connection with the representations made by D, corroborated by the statement prepared by H. which represented an existing indebtedness to D, in excess of the amount of the note offered, they, at best, suggest but a suspicion, the disregard of which will not justify the conclusion that the note was taken in bad faith." This stretches the rule greatly in favor of the holder.

In Cheever v. Pittsburg, L. & L. E. R. Co., 150 N. Y. 59, 44 N. E. 701, 34 L. R. A. 60, 55 Am. St. Rep. 646, by a ruling of four to three it was held, that where a note signed by the corporation, by its president, attested by its secretary, to the order of A, and indorsed by A, and the partnership of which the president was a member, one who took it before maturity, from the partnership, in payment of its debt, was a bona fide holder for value. It appears that A was the private secretary to the president and was merely used as a dummy, but of this the transferee was not aware. He, in fact, made no inquiry as to the making and issuance of the note. The court said: "The difficulty in this case is to find the circumstance which can be said to be sufficient to put B upon inquiry. There was absolutely nothing on the face of the paper, except the signature, as president, of the party who was dealing with it, and that, we think, was not sufficient, in view of the fact that the appearances were that he was a purchaser from a third party."

Bartlett, J., with whom concurred Haight and Vann, JJ., thought that "the fact that F was in possession of the notes of the defendant indorsed to him by the original payee * * * was enough to put B upon inquiry; and failing to do so he acted *mala fide*. This is a safe rule, and any other would be fraught with the greatest danger to corporations. It is, of course, quite possible that the president or other officer of a corporation may be lawfully in possession of its commercial paper, executed by himself, and entitled to use it in his own business, but there is no hardship in a rule requiring the proposed purchaser to ascertain the fact. There is no peril to the general business public in such a rule as the fact that the officer of a corporation desires to use its paper signed by himself, in his private business, is an unusual circumstance and naturally suggests inquiry." It seems to us the minority had the better of the argument.

In Manhattan Web Co. v. Aquidneck Nat. Bank, 133 Fed. 76, it was said, after announcing that the rule was well-settled that a check payable to an officer who draws a corporation check is taken with notice of any fraud that may be connected with its issuance, that: "There is a question whether this rule is not too broadly stated, since it would not be an unusual busines tranaction for a treasurer to draw corporate funds for his own salary and to deposit them in his own account subject to check for his private bills."

As showing that a practice in transactions with a bank which singly ought to put it on inquiry may not raise an estoppel against a corporation, whose officer has been collecting checks payable to it, instead of depositing them to its account in the bank, Nat. Bank of Commerce v. Lucerna Mill Co. (C. C. A.) 182 Fed. 1, is instructive. It was thought this more a question of fact than law.

In Niagara Woolen Co. v. Pacific Bank, 126 N. Y. Supp. 891, 141 App. Div. 265, the facts show that there were a number of checks coming to a corporation by mail and these were, by the president, from time to time, extracted and indorsed by him in the name of the corporation and deposited to the credit of a firm of which the president was a member. It was held that the bank was liable to the corporation.

In Havana Central R. Co. v. Knickerbocker Trust Co., 198 N. Y. 422, 92 N. E. 12, it was held that a bank of deposit which collected from drawee bank a check payable to the order of the treasurer, who signed it, was not responsible to the corporation, because it was said the drawee bank was presumed able to answer whether such a check should be paid. The instant case now holds that paying such a check to a bank of deposit does not make it liable to the corporation seemingly because there had been other such checks and no protest had been heard in regard thereto. The instant case seems to think there was "implied authority" in the fact of there having been no protest about the checks which had been paid. This is a somewhat slender basis to rest upon. The difference between the instant case and the New York cases and with others is it says there is nothing to arouse suspicion in a check payable to the order of the officer who draws it—the N. Y. cases holding that there is. The instant case admits that this might be a means of misappropriation, but thinks the danger could be obviated by countersignature,—not a very effective barrier, as appears in the Cheever case, *supra*, where there was an attestation by another officer and the intervention, too, of a dummy. The latter saved a note, but the former was not even noticed.

Even where there is a corporation note in favor of a payee taking it for the personal debt of the signer of the corporate name and this is transferred before maturity to a third person, it has been held that a showing to this effect shifts the burden of proof to the holder that he received it in good faith and paid value therefor. DeJonge & Co. v. Woodport, H. & L. Co. (N. J.), 72 Atl. 439. It would seem that had the note been payable to the signer's own order, he would have been put on inquiry without there being this precedent testimony. C.

ITEMS OF PROFESSIONAL INTEREST.

MEETING OF THE MICHIGAN BAR ASSOCIATION.

The Michigan Bar Association met July 16-17, 1913, at Lansing, Michigan.

The president's address was delivered by Hon. Watt S. Humphrey of Saginaw. Others who delivered addresses were as follows: Gov. W. H. Ferris, Chief Justice Joseph H. Steere, Senator Joseph T. Robinson of Arkansas, Hon. William K. Clute of Grand Rapids, Dean Henry M. Bates of Ann Arbor, Senator Porter J. McCumber of North Dakota and Hon. Burritt Hamilton of Battle Creek.

MULTNOMAH COUNTY (OREGON) BAR ASSOCIATION.

The annual meeting of the Multnomah Bar Association was held February 25th, 1913, at Portland, Oregon. Mr. E. E. Heckbert, the retiring president, delivered the annual address of the President, in which he reviewed the work of the Association during the year just closed. The meeting then proceeded to the election of officers. Mr. Arthur Langguth, for five years the Secretary of the Association, was elected President. Mr. Langguth was formerly a resident of Detroit, Michigan, coming to Oregon in 1903. Mr. Ralph A. Coan, of Portland, Oregon, is the new Secretary. The annual banquet of the Association was held on March 25th, 1913, in the elegant new Oregon Hotel. The guests of honor were six of the oldest practitioners of the Oregon Bar, namely: Mr. Cyrus A. Dolph, who was admitted to practice in 1866; Mr. P. L. Willis, admitted in 1866; Mr. Julius Caesar Moreland, Clerk of the Supreme Court of Oregon, who was admitted in 1867; Mr. H. H. Northup, admitted in 1868; Mr. Rufus Mallory, admitted in 1860, and Mr. Richard Williams, admitted in 1857. Justice Stephen J. Chadwick, of the Supreme Court of the State of Washington, was the principal speaker at the banquet.

POPULAR CRITICISM OF THE RULES OF EVIDENCE.

It is nothing surprising in these modern days for professional men to be instructed by the modern newspaper in all lines of their work, but no shrewder criticism has ever come from newspaper sources than a sarcastic write-up in the Minneapolis News, called "The Triumphs of Justice," in which is depicted the examination of a witness for the state in a criminal trial. The following is the scene that is depicted and one that is easily recognizable even if grossly exaggerated:

By any district attorney: "What is your name, please?"

"I object; this witness cannot possibly remember what she was christened, and the family Bible would be the best evidence."

"I withdraw the question. What are you commonly called?"

Objected to on the ground that it is not shown that the witness is an expert on "common callings."

"I will change the form of the question—what name are you known by?"

Objection on the ground that it is hearsay, that it is immaterial; not original evidence, and that no foundation has been laid for it by showing that the witness has any name.

Objection sustained. Exception noted.

"Have you a name?"

"Yes."

"What is it?" Same objections.

After argument, question allowed. Exception.

"My name is Mrs. Mary Smith."

Request to expunge the answer from the record because it is not shown that the witness is married, nor that her husband's name is Mary Smith. Answer stricken out.

"Are you married?"

Objected to as secondary evidence, on the ground that it has not been shown that the marriage certificate cannot be produced, and is immaterial, as the question of marriage is not involved. Objection sustained.

"Have you been known by any other name than Mrs. Mary Smith?"

Objected to as leading. Defendant's counsel asked to be heard on this matter, but the question was allowed—he seemed much elated.

The witness then answers, "Yes, Mary Jones."

Defendant's counsel moved to strike out the last part of the answer on the ground that it was not responsive. Motion was granted.

"When did you assume the name of Mrs. Mary Smith?"

Objected to by defendant's counsel on the ground that the answer may tend to humiliate the witness. Question allowed.

"In eighteen hundred and umph, when I was married."

By the court—"One moment, you may say, if that was the case, that it was when you went to live with Mr. Smith."

The witness: "Yes, that was it."

"How old are you?"

Objected to on the ground that it is not

shown that she is old at all. Objection sustained.

"Are you more than 21 years of age?"

"Yes."

"Do you consider that your 21st year began at your 21st birthday or ended on it?"

Counsel objected to this as immaterial and incompetent.

The remainder of the day was consumed in a bitter wrangle between counsel as to this question.

NEWS ITEMS FROM THE LEGAL WORLD OF CONTINENTAL EUROPE.

The Common Law, by Justice Oliver W. Holmes, Jr., has recently been translated into German, with the consent of the author, by Dr. Rudolf Leonhard (Dunker & Humblot, Leipsic, 1912. 433 pp.) and has been made the subject of a number of recensions in various continental law journals. This is not the first translation of the work, as F. Lamberghi, as early as 1890, published an Italian translation thereof, and it may be proper here to mention, that at the celebration of the centennial of the University of Berlin, Justice Holmes was created a Doctor juris honoris causa.

Among the many reviews of the work, a special interest attaches to that of Francis Hagerup in Nordisk Tidsskrift, XXV. 3 & 4, pp. 312-18, because he shows how Dr. Holmes' theory of "possession" is almost identically the same as that which always has reigned in Danish-Norwegian law, free from any influence of Civil Law, without its special theory of animus possidendi and without the ramanistic distinction between possessio and detentio.

It may be said to be a general characteristic of all of the reviews that they highly appreciate the historical portions of Justice Holmes' work, while they take many exceptions to the dogmatic parts thereof; this, as they themselves acknowledge, being caused by their inability to agree to the highly formalistic views which are characteristic of English law.

Sibastien Felix Raymond Saleilles died March 3, 1912. Saleilles has recently been introduced to American readers by the translation of his work "L'individualisation de la peine," and otherwise is not much known here, although his greatest influence and importance was not in the field of criminal law.

Saleilles was born in Baune, January 14th, 1855. After his graduation at Paris, he spent the rest of his life as a teacher of law, first at the University of Grenoble, then in Dijon, and finally, since 1895, at Paris, where he taught Criminal Law, Civil Law and Comparative Jurisprudence. He belonged to the modern school of French jurists, and as such did not look with disdain upon everything not French. He was a deep student of, and was greatly influenced by juridical thought of other countries, especially Germany, and among the Germans more especially, by Ihering. Among other continental jurists who died during 1912, may be mentioned Max Eugen Burckhard, of Austria. He managed to combine in one person a learned and much appreciated law-writer, with a theatrical manager (Director of the Burg-Theater of Vienna from 1890-97) and a writer of fiction (novels, dramas).

By Act of May 27, 1909, (Denmark) any person entitled to compensation for damage done by an automobile, has a lien upon the machine, whether it belonged to the driver or not. In a case before the Supreme Court, decided March 20, 1912, the question was raised whether this lien was valid against a later bona fide purchaser of the machine. The court's decision was in the affirmative.

By decision of April 15, 1912, the same court decided, that it was within its jurisdiction to decide whether a law passed by the legislative power was in conflict with the constitution, or not, and therefore to declare it valid or invalid, as the case might be.

In French reports of cases, one will quite often find, before or after the syllabus, the words "Judgment d'espece." Hereby it is meant to indicate, that the case was a peculiar one, and that general conclusions ought not to be drawn from the decision. Might this not be a good idea for American reports to adopt?

On a former occasion, we mentioned that in German reports of cases the names of the parties are not published. Dr. Kohler has commenced an agitation to have this changed, and has called forth others upholding the present custom. Dr. Kohler lays especial stress upon the argument that since the Court proceedings are public there can be no valid reason given, why the reports of them should not be entirely public also. Others prefer the present custom and argue that nothing is gained by publishing the names, while a great deal of damage and suffering for innocent parties may be caused thereby, especially since a change in this custom would act as a direct encouragement of the yellow press.

AXEL TEISEN.

Philadelphia, Pa.

CORRESPONDENCE.

WHY ARE OUR STATE BAR ASSOCIATIONS NOT MORE LARGELY ATTENDED?

Editor Central Law Journal:

I am in receipt of yours of the 10th inst., and will give you what information I have respecting our State Bar Association.

Our State Bar Association now and for many years, always, I presume, has been under the absolute dominion of the railroad attorneys of Kansas.

The offices and committees rotate within a small circle, and the association in no manner represents the bar of Kansas.

The party to deliver the chief address each year has either been a railroad attorney or one selected by railroad attorneys, and this year, Mr. Hines, the chief counsel of the Santa Fe, in New York City, delivers the address on "Failure of Individual Responsibility in Government." The circumstances naturally lead to the opposing idea of "Success of Corporate Responsibility in Government."

Last year the annual address was delivered by some Ann Arbor professor, I have forgotten his subject, but it was against everything the people have been demanding of recent years, and particularly against the election of United States senators by popular vote, as well as against the initiative, the referendum and the recall—a standardized corporation effort.

The meetings of the State Bar Association here are not attended by more than a dozen members, except the annual address, which is usually heard by several hundred, mostly citizens of the town, not lawyers.

Very truly,

A. A. GRAHAM.

Topeka, Kansas.

[Note.—The above is the first of a series of letters which we are going to publish from lawyers who are not members of their state bar associations to find out the reason why they are not in the fold. We stand heartily for the local and state bar associations. We regard them as vital to our professional life and important in their reflex activity upon the people. But we have been discouraged by many visits we have made and reports received from certain bar associations which do not seem to enjoy the support of the entire bar of the state. We want to know why and so we are going to ask lawyers who do not attend the meetings of their local associations to give their reasons. We want signed statements and we believe every lawyer owes it to his profession to point out the hidden rocks which are hindering professional development in his state. When we learn the causes that are keeping our bar associations from becoming the great exponents of professional opinion in the various states we are going to apply the lash without fear or favor until we have brought about conditions in every bar association where every respectable lawyer shall have equal rights and privileges. The enforcement of the Code of Ethics requires that every lawyer shall aid his local association in their efforts to raise the standard of the judiciary and purge the profession of those who practice unethically. And since many of our most prominent attorneys are finding themselves accused of unprofessional conduct in the light of the new written code, it will be necessary to have a full and free expression of professional opinion in order that those higher up in the profession shall not escape punishment. For instance, not so long ago an attorney for a prominent railroad was criticised for entertaining a federal judge in a very elaborate manner, violating both the letter and the spirit of section three of the Canons of Professional Ethics. With a bar association composed of every shade of professional life and opinion, active and alert, the "big" lawyer as well as the "little" lawyer will be compelled to walk more circumspectly and the influence of the association will widen effectively for good throughout the whole community. We should be glad to hear from lawyers in any state concerning their local bar associations. We are in these columns all among ourselves and the criticisms if made in a proper spirit will not be resented but are calculated to be very helpful.—Editor.]

AMENDING THE CONSTITUTION.

Editor Central Law Journal:

I have read with interest the article in your May number, by James B. McDonough, on "Amending the Constitution of the United States," in which he argues, that in addition to methods of amendment provided for in Article Five, there is a reserve power of amendment in the people of the United States, which may be exercised wholly independent of any action or control by the Congress or the Legislatures of the several States.

The first thing to naturally suggest itself in this connection, is one of orderly procedure, or of jurisdiction, if you please. Who could initiate the movement so as to give it any legal status, transcending the dignity of volunteer agitation?

If we assume that our nearly twenty millions of electors may assemble in mass convention for this purpose, then it would require ten millions and one to constitute a quorum, and is action to be taken by a majority of a quorum or by a majority of the whole electorate? Manifestly, some job to call the roll and ascertain if a quorum be present. Again, how is this assembly to be constituted? May it be composed of a simple majority of the whole electorate without regard to state lines, or must it be made up of a majority of the electors from each State? Or, shall we have forty-eight separate volunteer mass meetings—one in each State?

We are inclined to think that any method pursued would produce a condition that would back the recent Chicago convention off the boards. In any event, no such action, by whatever method, could have any legal standing, nor could it be officially proclaimed or enforced by any means short of revolution.

It would seem that the failure to indicate any method of direct initiation of amendments by the people in the Constitution itself is equivalent to a denial of that right. The article referred to seems to overlook the fact that our government is representative and not a democracy in the full sense of the word. In the Federal scheme the several states are treated as entities, each representing its own pople collectively, and nowhere in the federal constitution is there any recognition of the right of direct initiation by the people, other than

through their duty accredited representatives; hence the representative scheme of proposing and adopting amendments provided for in Article Five. Even by this article the people are not permitted to vote directly on the adoption of any amendment, however proposed. The whole scheme contemplates representative action alone, and is directly opposed to the idea of direct action by the people.

I quite agree with the other views advanced by Mr. McDonough.

J. C. MICHAEL.

St. Paul, Minn.

BOOKS RECEIVED

Crime and Its Repression, by Gustav Aschaffenburg, professor of Psychiatry in the Cologne Academy of Practical Medicine and editor of the Journal of Criminal Psychology and Criminal Law Reform, translated by Adalbert Albrecht, associate editor of the Journal of Criminal Law and Criminology. Price $4.00. Boston, Mass. Little, Brown & Company. Review

Forms for Missouri Pleading, also Chapters on Advertisements, Affidavits, Arbitration, Assignments, Depositions, Homesteads and Naturalization of Aliens, with forms for each topic. By Everett W. Pattison, author of "Pattison's Digest" and "Missouri Code Pleading." Second Edition by T. B. Wallace of the Kansas City Bar. Price, $6.00. Kansas City, Mo., Vernon Law Book Company. Review will follow.

The Law of Commercial Exchanges, by Chester Arthur Legg, A. B. LL. B., member of the Chicago Bar. Price, $3.50. New York, Baker Voorhis & Co. Review will follow.

Code Pleading as interpreted by the Courts of Missouri, by Everett W. Pattison of the St. Louis Bar. Second Edition by T. B. Wallace of the Kansas City Bar. Price, $6.50. Kansas City, Mo. Vernon Law Book Company. Review will follow.

BOOK REVIEWS.

BRADY ON BANK DEPOSITS.

This work by Mr. John Edson Brady, of the New York bar, is special in its nature, the text thereof in two parts discussing "Trust Deposits" and "Joint and Alternate Deposits" with quite elaborate consideration of cases cited in footnotes. This is followed by "Appendix A," which gives decisions from States in alphabetical order and this by "Appendix B," which embraces statutes in similar order.

This work is intended both as a book for lawyers and for the guidance of men in banking circles. The style of the production is accordingly so arranged, and while, as a legal treatise, it may be somewhat affected, yet it is not without its superiority over a mere digest. Its arrangement makes it readily useful and should greatly assist in the correct handling of deposits in banks other than where the depositor alone has an interest therein. The growing volume and frequency of these special deposits show that the work has a place to fill.

The volume is of good appearance in binding of law buckram and its general finish is excellent. It contains inclusive of tables of cases, 319 pages, and is published by Banking Law Journal Company, 27 Thames street, New York, 1911.

AMERICAN ANNOTATED CASES, 1913 A, 1913 B.

This series published by Bancroft-Whitney Co., San Francisco, and Edward Thompson Co., Northport, L. I., N. Y. began in 1912 with the three volumes of that year called 1912A, 1912B and 1912C, now appears in due course, 1913A and 1913B. The series, as was observed in our review of the former volumes, are successors of American Decisions, American Reports and American State Reports and these well-known reports promise a similar value in selection and annotation of cases. So far the standard set appears to have been lived up to. Former review of series appears in 75 Cent. L. J., 375.

HUMOR OF THE LAW.

A rural magistrate, listening to the testimony of the witness, interrupted him, saying:

"You said that you made a personal examination of the premises. What did you find?"

"Oh, nothing of consequence," replied the witness. "'A beggarly account of empty boxes,' as Shakespeare says."

"Never mind what Shakespeare said about it," said the magistrate. "He will be summoned to testify for himself if he knows anything about the case."—London Tit-Bits.

When a potential lawyer seeks advice on the art of cross-examination, it is usually condensed into one word, "Don't!" A lecturer who believes there are exceptions to the rule is Professor Hoehling, of Georgetown, and in support of his view he tells the following:

In a case of some importance, it was necessary to establish that one of the parties reached home on a particular night in a rather mellow condition. His valet, George, was put on the stand, and denied that his master had ever been intoxicated. On cross-examination he was asked:

"What did Mr. Smith do when he reached home?"

"He jus' went right to bed, sah."

"Did he have anything to say to you?"

"Nothin' much, sah."

"Well, now tell us just what he did say."

"Well, he says 'Good-night, George.'"

"And he said nothing else?"

"Well——" very reluctantly—"he says, 'Call me early, George.'"

"And didn't he say anything besides 'Good-night, George, call me early'?"

"Well, sah, then he says, 'cause I'm to be Queen o' the May.'"—Everybody's.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Acknowledgement** — Effect of.— An efficacious acknowledgment of a deed not only renders it self-proving, if seasonably recorded, but imports verity, except for duress or fraud. —Vizard v. Robinson, Ala., 61 So. 959.

2. **Bail**—Vacating.—A district judge can vacate an order granting bail in a capital case after indictment found, when there was nothing to rebut the presumption created by the finding.—State v. Jackson, La., 61 So. 987.

3. **Bankruptcy**—Alimony.—A judgment for a wife in New York in an action to enforce a judgment for alimony and counsel fees rendered for her in South Dakota was not discharged by the husband's discharge in bankruptcy in this state.—In re Williams, N. Y., 101 N. E. 853.

4.——Antecedent Agreement.—An antecedent agreement by a debtor to execute a mortgage to a particular creditor to secure its claim did not render the mortgage, when executed, fraudulent as to the mortgagor's other creditors.—In re Hawks, U. S. D. C., 204 Fed. 309.

5.——Contempt.—Punishment for contempt in bankruptcy proceedings should not be used solely for intimidation, nor to delay administration, but rather to compel obedience to orders to secure proper results in the administration of the estate.—In re Farkas, U. S. D. C., 204 Fed. 343.

6.——Fraud.—Where, in an action for debt evidenced by notes and an open account, defendant pleaded a discharge in bankruptcy, plaintiff, in a supplemental petition, could reply that the goods had been purchased by fraud, and that the debt was, therefore, not discharged. —Cooper Grocery Co. v. Blume, Tex., 156 S. W. 1157.

7.——Insolvency.—Where, in proceedings to wind up an insolvent corporation, it was not clear that the indebtedness would require payment in full of unpaid stock subscriptions, the corporation's trustee in bankruptcy could not maintain a suit therefor without a preliminary investigation and assessment of the amount necessary to pay debts and expenses.—Rosoff v. Gilbert Transp. Co., U. S. D. C., 204 Fed. 349.

8.——Fraud.—The fact that a party defendant, purchasing from a bankrupt, got property at a bargain price, or at much less than its actual value, held immaterial in an action to set aside the conveyance as fraudulent, since mere inadequacy of price is not sufficient to predicate fraud.—Klein v. Gallin, 141 N. Y. Supp. 831.

9.——Partnership.—In bankruptcy proceedings against a partnership, the court may obtain service on a member of the firm residing out of the district.—In re J. & M. Schwartz, U. S. D. C., 204 Fed. 326.

10.——Practice.—The bankruptcy court is limited to the appointment of a receiver "to take charge of the property of the bankrupt" pending the election of a trustee.—Greenhall v. Hurwitz, 141 N. Y. Supp. 914.

11. **Banks and Banking**—By-Law.—A by-law of a savings bank requiring immediate notice in writing in case of loss of a passbook was waived where no written notice was requested, and the refusal to pay a deposit was based on the ground that the depositor must give a bond of indemnity.—Mierke v. Jefferson County Savings Bank, N. Y., 101 N. E. 889.

12.——Cashier.—While the cashier of a bank is the chief executive officer and his authority exceeds that of the president, he has no inherent power to pledge the assets of the bank for the payment of an antecedent debt; his power only extending to the disposal of the bank's negotiable securities in the ordinary course of business.—Montgomery Bank & Trust Co., v. Walker, Ala., 61 So. 951.

13.——False Report.—Where the president of a bank makes a false report to the superintendent of banks, he is guilty of an offense under Laws 1909, though he has no knowledge of the truth or falsity of the report; intent not being an essential element of the offense.—State v. Sharp, Minn., 141 N. W. 526.

14.——Forgery.—A bank is not liable for repayment of amounts paid out on forged checks, where the depositor's negligence contributed to such payments and it has itself been free from any negligence.—Morgan v. United States Mortgage & Trust Company, N. Y., 101 N. E. 871.

15.——Regulation.—Though organized and financed by private individuals and for personal gain, banks are in a sense public institutions, and for that reason are subject to legislative regulation, examination, and control.—Cartmell v. Commercial Bank & Trust Co., Ky., 156 S. W. 1048.

16. **Bills and Notes**—Discharge of Surety.— Where the holder of negotiable paper unreservedly released the maker without the consent of an indorser, the indorser at common law was thereby discharged.—Arlington Nat. Bank v. Bennett, Mass., 101 N. E. 982.

17.——Duress.—Where a master falsely accused his servant of embezzlement and threat-

ened to prosecute him, a note executed by a sister of the servant in favor of the master is void for duress; the consideration being to save the servant from prosecution.—Kronmeyer v. Buck, Ill., 101 N. E. 935.

18.——Place of Contract.—Where a note, executed in Indiana and non-negotiable under the law of that state, was payable in Illinois, where it was negotiable, its negotiability, as affecting liability, was to be determined by the law of Illinois.—Bombolaski v. First Nat. Bank of Newton, Ill., Ind., 101 N. E. 837.

19.——Surety.—Where a surety signed a note as maker under an agreement that he should be bound only on condition that a third person signed the note with him, and the third person signed his name on the back of the note without any words expressing the character of his undertaking, and the two made no contract between themselves, they were as between themselves sureties.—Erwin v. E. I. Du Pont De Nemours Powder Co., Tex., 156 S. W. 1097.

20. **Boundaries**—Common Source of Title.—In a suit over a disputed boundary, a witness under whom defendants claimed could state that when he bought the land he began to survey at a Spanish oak which was admitted by both parties to be a proper corner of the land in controversy.—Hagaman v. Bernhardt, N. C., 78 S. E. 209.

21. **Cancellation of Instruments**—Duress.—Where a deed to property is obtained by duress in threatening the grantor with an unwarranted criminal prosecution, the grantee upon the setting aside of the deed is chargeable with rents and profits.—Kronmeyer v. Buck, Ill., 101 N. E. 935.

22. **Carriers of Goods**—Perishable Freight.—Where a carrier's agent consented, when requested, to place a car of perishable fruit in position for unloading and failed to do so and the fruit decayed, the carrier was liable for his negligent failure.—Texas & P. Ry. Co. v. Payne, Tex., 156 S. W. 1126.

23. **Carriers of Live Stock**—Agency.—A station agent has authority to bind the carrier by a contract to furnish a particular kind of car for the transportation of fowls.—Wells Fargo & Co. Express v. Hennessy, Tex., 156 S. W. 1158.

24. **Carriers of Passengers**—Care.—The high degree of care which a carrier owes to its passengers does not apply in the making of a contract by a sale of a ticket the carrier is held to the exercise of ordinary care only.—Texas & N. O. R. Co. v. Wiggins, Tex., 156 S. W. 1131.

25.——Ejection.—That a passenger is wrongfully ejected in the presence of other passengers and in a manner to humiliate him and suffers mental anguish and inconvenience may be considered on the question of compensatory damages.—Edwards v. Southern Ry. Co., N. C., 78 S. E. 219.

26.——Elevator.—The owner of an apartment house conducting it himself is, in the operating of its passenger elevator, as to all having a right to use it, a common carrier, under the duty to exercise the highest care in respect to it.—Tippecanoe Loan & Trust Co. v. Jester, Iowa, 101 N. E. 915.

27. **Champerty and Maintenance**—Interest in Litigation.—Maintaining another's suit is lawful, if the person so maintaining has any interest in the suit, however remote, or is related to the suitor.—Anderson v. Anderson, Ga., 78 S. E. 271.

28. **Charities**—Alleviation of Suffering.—Residuary bequest to "the cause of charity," to be expended by the executor as he might elect to worthy individual cases and institutions dedicated to the cause and alleviation of human physical suffering, held valid.—Torrey v. Day, 141 N. Y. Supp. 814.

29.——Support of Churches.—A gift for the support of churches, or to pay the expense of teaching or preaching religious doctrines, is a gift for a charitable use, o ra public charity.—People v. Braucher, Ill., 101 N. E. 944.

30. **Chattel Mortgages**—Description.—Description of property in chattel mortgage as "one black mare mule colt eight months old" held sufficient to charge a purchaser from the mortgagor with notice, and hence the purchaser took subject to the mortgage.—Pitluk & Meyer v. Butler, Tex., 156 S. W. 1136.

31. **Commerce**—Local Transaction.—Where a contract of sale is made between residents of one state, the delivery of the goods through the boundaries of a sister state does not affect the domestic character of the business, and render it interstate commerce.—People v. Abramson, N. Y., 101 N. E. 849.

32.——Stipulation.—A carrier receiving property for transportation from a point in one state to a point in another, is within Carmack Amendment, making it liable for loss en route, notwithstanding stipulation to the contrary, where it accepts such shipment over route selected by shipper, as to which the carrier has no established through rate.—Norfolk & W. R. Co. v. Dixie Tobacco Co., 33 Sup. Ct. Rep. 609.

33. **Constitutional Law**—Health.—Confiscation and destruction provided by municipal ordinance where milk does not conform to the requirements of an ordinance forbidding shipment into the city of milk from cows outside, unless they have been first subject to a tuberculin test and certificate shall have been filed with the health officer, held not to take property without due process of law in violation of Const. U. S Amend. 14.—Adams v. City of Milwaukee, 33 Sup. Ct. Rep. 610.

34. **Contracts**—Abrogation.—The parties to a contract may, by their failure to act or by their silence, abrogate a contract or the unperformed part.—Enderlien v. Kulaas, N. D., 141 N. W. 511.

35.——Mutual Promises.—Where the promise of one is the consideration of the other, neither party can be bound unless the other is bound.—Citizens' Nat. Life Ins. Co. v. Murphy, Ky., 156 S. W. 1069.

36.——Public Policy.—An agreement on sufficient consideration as to the manner of the distribution of an estate so as to avoid the expense and trouble of a will contest held not void as against public policy.—Schoonmaker v. Gray, N. Y., 101 N. E. 886.

37.——Waiver.—Where one contracting party by his own default causes the other to breach a collateral provision of the contract, the purpose of which was to suspend the time of payment of money by him, he is deemed to have

waived the benefit thereof, and cannot rely on the breach as a defense to an action for the money.—Boggess v. Bartlett, W. Va., 78 S. E. 241.

38. **Corporations** — Agency.—Where defendant's agent made false representations in complainant's presence to B, to induce him to purchase certain of defendant's stock, and failed to inform complainant of the truth before he also sold some of the stock to him, the transaction with complainant was tainted with the same fraud, which entitled him to rescind.—Southern States Fire & Casualty Ins. Co. v. Cromartie, Ala., 61 So. 907.

39.——Presumption.—The trustees of a corporation are individually liable to one injured by relying upon representations made by the corporation, though the evidence does not disclose that they were not in active charge of the corporate affairs; the presumption being that they were.—Marsh v. Usk Hardware Co., Wash., 132 Pac. 241.

40.——Statutory Liability.—Where a note of a corporation was paid by an accommodation surety, only those who were stockholders at the time of payment were subject to statutory liability thereon.—Wills v. Woolner, Cal., 132 Pac. 283.

41. **Courts**—Federal Question.—Recital of certificate of highest state court, that it was made by order of the court itself to afford record evidence that a federal question raised by a petition for rehearing was adversely determined, justifies treating such certificate as bringing into the record necessary proof of a federal question, authorizing review by federal Supreme Court.—Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co., 33 Sup. Ct. Rep. 605.

42. **Covenants**—Grant, Bargain, Sell.—While "grant, bargain, sell, and convey," as words of conveyance, unaided by statute, operate as a conveyance, they warrant nothing as to title.—Mackintosh v. Stewart, Ala., 61 So. 956.

43. **Criminal Law**—Former Jeopardy.—To constitute former jeopardy, it must appear that in each prosecution the accused, the sovereignty whose law has been violated, and the offense, not only as to the act but as to the crime, were identical.—McIntyre v. Commonwealth, Ky., 156 S. W. 1058.

44.——Inference.—An inference cannot be predicated on another inference.—Dowell v. State, Ind., 101 N. E. 815.

45. **Deeds**—Construction.—A deed fairly doubtful must be construed most strongly against the grantor and in favor of the grantee.—Vandegrift v. Shortridge, Ala., 61 So. 897.

46.——Delivery.—Delivery of a deed by the grantor to the grantee with instructions that he deposit it in a safety deposit box to which both had access held not a delivery effective to pass title.—Elliott v. Merchants' Bank & Trust Co., Cal., 132 Pac. 280.

47.——Duress.—A deed to valuable property extorted by threats of prosecution for an alleged embezzlement is invalid for duress, where there was no embezzlement, or the embezzlement, if any, amounted to only a few dollars.—Kronmeyer v. Buck, Ill., 101 N. E. 935.

48.——Interest.—One who merely received a sheriff's deed for standing timber could not convey the right to operate a turpentine orchard in connection with such timber; the purchaser's right to convey only including the right to remove it.—Dixie Grain Co. v. Quinn, Ala., 61 So. 886.

49. **Ejectment**—Common Law.—At common law a judgment in ejectment did not confer title upon the successful party and was not evidence of title in a subsequent action even between the same parties.—Hale v. Chandler, Ala., 61 So. 885.

50. **Electricity**—Negligence.—Where defendant telephone company had reasonable cause to believe that lightning would be conducted over its wires into plaintiff's house and that injury might result, it was bound to exercise reasonable care in providing safety appliances to prevent such injury.—Southwestern Telegraph & Telephone Co. v. Davis, Tex., 156 S. W. 1146.

51. **Evidence**—Non-Experts.—Witnesses other than the subscribing witnesses, may testify that a testatrix was of sound mind, without stating the facts on which their opinion is based—Thornton v. McReynolds, Tex., 156 S. W. 1144.

52.——Parol.—Parol evidence is admissible to show that one signing a note, followed by the word "surety," is a principal.—Daugherty v. Wiles, Tex., 156 S. W. 1089.

53.——Presumption.—Presumptions cannot be based upon presumptions.—Goodes v. Order of United Commercial Travelers of America, Mo., 156 S. W. 995.

54. **Execution**—Equity of Redemption.—The equity of redemption in property mortgaged to secured a note is subject to levy and sale at the suit of other creditors.—Hudson v. Childree, Tex., 156 S. W. 1154.

55.——Removal of Property.—A right of action for the unlawful removal of property levied on is in the sheriff, and an execution creditor has no standing, except on the sheriff's right.—Gilfillan v. King, Pa., 86 Atl. 925.

56. **Explosives**—Proximate Cause.—An action for misstatements by the sellers of blasting powder, as to the manner of handling it, which are the proximate cause of an injury, may be based either upon deceit or negligence.—Marsh v. Usk Hardware Co., Wash., 132 Pac. 241.

57. **Fixtures**—Agricultural.—The rule that trade or domestic or ornamental fixtures placed upon the land by a tenant do not become a part of the realty does not apply, according to the weight of authority, to agricultural fixtures.—Earle v. Kelly, Cal., 132 Pac. 262.

58.——Intention.—Mere use of mill machinery in connection with the business does not necessarily so annex it to the realty that it will be a fixture, the question depending largely on the intention of the parties.—Hanvey v. Gaines, Ala., 61 So. 883.

59. **Fraud**—Action or Conduct.—A "representation" within the law of fraud is anything short of a warranty, which proceeds from the action or conduct of the party charged, and which is sufficient to create upon the mind a distinct impression of fact conducive to action.—St. Louis & S. F. R. Co. v. Reed, Okla., 132 Pac. 355.

60. **Frauds, Statute of**—Parol Contract.—A parol contract affecting land may be enforced, unless the party against whom it is sought to be enforced pleads the statute of frauds.—Willis v. Zorger, Ill., 101 N. E. 963.

61. **Fraudulent Conveyances**—Exemption.—A judgment against a resident householder whose entire property, real and personal, is less than the amount exempt from execution, is not an enforceable lien on the debtor's real estate, and a purchaser of the property before a judicial sale takes it exempt from any lien of such judgment.—Rich v. Callahan Co., Ind., 101 N. E. 810.

62. **Guardian and Ward**—Appointment.—Where a foreign insurance company doing business in the state issued a policy on the life of a resident of St. Louis for the benefit of his wife and children, the probate court of that city had jurisdiction to appoint a curator of an infant beneficiary, who, with other beneficiaries, could sue on the policy.—Hartung v. Northwestern Mut. Life Ins. Co., Mo., 156 S. W. 980.

63. **Homestead**—Separate Tracts.—That a portion of land did not adjoin another portion, all of which was of a value of less than $1,000 and was cultivated and used as a homestead, did not destroy the homestead character of the property.—Farmer v. Hampton, Ky., 156 S. W. 1041.

64.——Termination.—Where an intestate left no minor children and the homestead was not legally set apart to the widow during her lifetime, it descended upon her death to the heirs of the husband.—Miles v. Lee, Ala., 61 So. 915.

65. **Husband and Wife**—Adverse Possession.—As between husband and wife, adverse possession cannot exist; and, before one may acquire title from the other by adverse possession, the marital relation must have been terminated by divorce or abandonment.—Madden v. Hall, Cal., 132 Pac. 291.

66.——Contract.—A married woman having joined her husband in a contract for the purchase of realty on credit, held subject to a personal judgment for the amount due thereon equally with her husband.—Fain v. Heathman, Ky., 156 S. W. 1071.

67.——Estoppel.—While a married woman may be estopped to claim real estate, mere silence or inaction will not work such estoppel.—Anders v. Roark, Ark., 156 S. W. 1018.

68.——Husband's Debt.—A note given by a husband and wife for money borrowed by the husband with which to meet the pay-roll of his business was not binding on the wife.—McCarthy v. People's Savings Bank, Ark., 156 S. W. 1023.

69.——Wife's Property.—Where defendant contracted to sell his wife's property, and plaintiff knew that the title was in defendant's wife, there could be no recovery, even of nominal damages, for breach of the contract, upon the wife's subsequently refusing to sell.—McMillan v. Wilcox, Ga., 78 S. E. 270.

70. **Indictment and Information**—Statutory Offense.—Where an indictment or information is based on a statute creating a crime unknown to the common law, it must set forth all the constitutive facts required by the statute to make out the offense.—State v. Shortell, Mo., 156 S. W. 988.

71. **Insurance**—Exception.—Where insured, in an accident policy providing that no benefit should be paid for injuries received while in a caboose used for passenger service, was killed while on a caboose attached to a stock train, he being in charge of cattle, the caboose on which he was riding was not "used for passenger service."—Standard Accident Ins. Co. of Detroit, Mich. v. Hite, Okla., 132 Pac. 333.

72.——Indemnity.—Under an insurance policy indemnifying against loss or damage occasioned to an automobile by theft, robbery, or pilferage, the owner cannot recover for damages to the machine when taken and used by another without the owner's consent, but without intent to steal.—Hartford Fire Ins. Co. v. Wimbish, Ga., 78 S. E. 265.

73.——Penalty.—Where a paid-up policy was pledged with the insurer for a loan under an agreement that it could be canceled for $500 less than its true value, the amount exacted was a penalty, making the agreement void, and an attempted forfeiture of the policy by the insurer for nonpayment of the loan was ineffective.—Palmer v. Mutual Life Ins. Co. of New York, Minn., 141 N. W. 518.

74. **Intoxicating Liquors**—Police Power.—The right to sell intoxicating liquors is not a natural, inherent, or inalienable right, or a property or personal right, and may therefore be restricted both in the number of licenses and the manner of their exercise.—State v. Board of Com'rs of Morgan County, Ind., 101 N. E. 813.

75. **Landlord and Tenant**—Tenancy in Common.—An action for rent was not maintainable where defendant's use of the premises had always been in common with that of plaintiff.—Smyre v. Board of Com'rs of Kiowa County, Kan., 132 Pac. 209.

76.——Eviction.—Where plaintiff was in possession as tenant or subtenant, defendant, the owner of the fee, could not regain possession by force, though plaintiff was liable to be dispossessed for holding over or failure to pay rent.—Domhoff v. Paul Stier, 141 N. Y. Supp. 825.

77.——Fixtures.—Where a lessee of a theater installed fixtures and began giving shows before the building was completed, he was liable for rent.—McConnell & Merchant v. Brick-Phillips Co., Tex., 156 S. W. 1133.

78. **Libel and Slander**—Conspiracy.—An action for slander cannot be maintained against two or more persons jointly unless the slander is the result of a conspiracy.—Bebout v. Pense, S. D., 141 N. W. 515.

79.——Privilege.—Where an alleged slander was spoken concerning plaintiff, the overseer of a corporations' plantation, by the president, while investigating the corporation's business, the statement was none the less privileged because it concerned the business of the corporation and not that of defendant individually.—Phillips v. Bradshaw, Ala., 61 So. 909.

80.——Privilege.—Whether a charge of crime against another is privileged does not depend so much on the manner or form in which the charge is imputed as on the occasion and circumstances under which it is made, and whether it is made in good faith by a person immediately interested to protect his own interest and without a malicious motive.—Christopher v. Akin, Mass., 101 N. E. 971.

81.——Privilege.—Statements, in a petition to the Commissioner of Education for the removal of a school trustee, relevant to the legality or propriety of his appointment, and to the effect that he could barely read and write, was intemperate, and morally unfit to hold the office, were privileged, irrespective of the petitioner's belief in the relevancy thereof.—Morah v. Steele, 141 N. Y. Supp. 868.

82. **Master and Servant**—Independent Contractor.—The work of calcimining the interior walls of a building is not so inherently dangerous that the owner is liable to a passerby who was injured by a bucket of calcimine, which

was caused to fall out of the window owing to the carelessness of the servant of an independent contractor doing the work.—Drennen Co. v. Jordan, Ala., 61 So. 938.

83. **Mortgages**—Release.—It is not necessary for a mortgagee's wife to join her husband in the execution of a valid release of the mortgage.—Bunger v. Pruitt, Wash., 132 Pac. 237.

84. **Names**—Idem Sonans.—The doctrine of idem sonans may not be invoked where an indictment charges the name of the person injured to be "Rosetta," while the proof shows that her name is "Rosalia."—People v. Smith, Ill., 101 N. E. 957.

85. **Navigable Waters**—Bridges.—Until Congress has acted relative thereto, it is within the power of the states to authorize the construction of bridges across navigable streams within their limits.—Maudlin v. Central of Georgia Ry. Co., Ala., 61 So. 947.

86. **Negligence**—Concurrent.—Where both parties are guilty of negligence which concurred in producing an injury, the one suffering the loss cannot recover, for the law will not stop to inquire which was the most negligent, but bars all recovery if the loss would not have happened but for the negligence of plaintiff.—Mann Bros. v. City of Henderson, Ky., 156 S. W. 1063.

87.——Increasing Hazard.—Where it was understood that, pending work under a contract for the repair of a building defendant would continue to use the upper floors, which were supported by decayed floor beams, defendant owed the contractor and his employees the duty not to increase the hazard of their work by placing too great weight on such floors.—Parsan v. New York Breweries Co., N. Y., 101 N. E. 879.

88.——Licensees.—Where a contractor, to replace stairs in a building, retained the exclusive control of the stairway, and did not invite employees of other independent contractors to use it, such an employee, using the stairway, was a licensee, and the contractor owed him no duty, except to refrain from doing him will ful injury, and from wantonly exposing him to danger.—Cole v. L. D. Willcutt & Sons Co., Mass., 101 N. E. 995.

89. **Parties**—Joinder.—A charge of negligence against the foreman of the employer may be united with a charge against the employer for failure to guard machinery as required by law.—Jackson v. Orth Lumber Co., Minn., 141 N. W. 518.

90. **Partition**—Homestead.—No partition of a homestead can be had while the surviving widow and other children reside thereon; the widow having prior right thereto.—Anders v. Roark, Ark., 156 S. W. 1018.

91. **Principal and Agent**—Scope of Authority.—Authority to an agent to sign a person's name to a note as surety does not confer authority to sign his name to a joint and several note as principal, nor does authority to execute a note for a certan amount confer authority to execute one for a larger amount.—Connor v. Uvalde Nat. Bank, Tex., 156 S. W. 1092.

92. **Principal and Surety**—Relation of Surety.—The undertaking of a surety on a note is independent and adidtional to any security furnished by the maker, and a holder of the note may sue on the unqualified promise of the surety without reference to any collateral security available from other sources.—Erwin v. E. I. Du Pont De Nemours Powder Co., Tex., 156 S. W. 1097.

93. **Quieting Title**—Practice.—A complainant cannot raise the issue that an interest adverse to him was acquired by fraud upon others.—Moore v. Empire Land Co., Ala., 61 So. 940.

94.——Transfer of Title.—A decree quieting title in an heir of land conveyed by his ancestor rendered in a suit against the grantee of the ancestor does not transfer title to the heir, but only estops the grantee from asserting title against him.—Vandegrift v. Shortridge, Ala., 61 So. 897.

95. **Reformation of Instruments**—Clerical Error.—A clerical error in an instrument within the rule that mere clerical errors are not the subject of reformation is an error appearing to be such on the face of the instrument, and where a contract contains such an error, a party thereto may enforce the contract as corrected without first obtaining a reformation.—Castle v. Gleason, S. D., 141 N. W. 516.

96.——Statute of Frauds.—The statute of frauds cannot be pleaded as a matter of defense to a bill to reform a deed on account of mutual mistake.—Correll v. Greider, Ill., 101 N. E. 930.

97. **Sales**—Express Warranty.—Any positive affirmation of a fact, as distinguished from a mere matter of opinion, may constitute an express warranty, and no particular language is necessary, and it is not necessary that it be in writing.—Frey v. Fales, Okla., 132 Pac. 342.

98.——Stipulation.—Where parties to a sale contract have stipulated what course shall be pursued by the buyer if the warranty fails, such provision must be followed by him in seeking to enforce the warranty.—Hope v. Peck, Okla., 132 Pac. 344.

99. **Set-Off and Counterclaim**—Non-Resident.—The non-residence of a party against whom a set-off is claimed is of itself good ground for equitable relief allowing the set-off, and is also good ground for recoupment.—Mackintosh v. Stewart, Ala., 61 So. 956.

100. **Specific Performance**—Oral Agreement.—A contract to will all intestate's property to complainants in consideration of support and care, though resting in parol, will be enforced in equity if definite and certain, and the relief will not be harsh, oppressive, or unjust to innocent third persons or against public policy.—Pugh v. Bell, Cal., 132 Pac. 286.

101. **Torts**—Practice.—Where a joint tort is alleged, there can be no recovery, without proof of a wrongful act by both defendants.—Gilfillan v. King, Pa., 86 Atl. 925.

102. **Trusts**—Gift.—Where a son purchased real property with his own funds and caused the title to be taken in the name of his mother, it would be presumed that a gift was intended and not a resulting trust.—Elliott v. Merchants' Bank & Trust Co., Cal., 132 Pac. 280.

103. **Vendor and Purchaser**—Collateral Agreement.—That a vendor wholly fails to fulfill his representations after a reasonable time is a good defense to notes given for the price of lots, bought on representations extrinsic to the title papers that he will do certain things which will greatly enhance the value of the lots.—Thrasher v. Cobb Real Estate Co., Ga., 78 S. E. 254.

104.——Plat.—Where the owner of an entire square sells lots, as having certain dimensions, according to a particular plat, the vendee is entitled, as against the owner, his heirs, and vendees of other lots, to the lots purchased by him, and there is no authority which can divest the title or reduce the dimensions of the lots so acquired.—Beatty v. Burke, La., 61 So. 1000.

105.——Vendor's Lien.—A vendor's lien exists only in case of a sale of real property, and does not arise in case of a sale of both real and personal property under an entire contract for a gross sum.—Hanvey v. Gaines, Ala., 61 So. 883.

106. **Waters and Water Courses**—Last Clear Chance.—Where a municipality, after due notice that plaintiff's premises were being flooded by a leak from a pipe connecting with the city water mains, failed to use ordinary care to turn off the water and avert the damage, plaintiff can recover under the doctrine of the last clear chance, even though the leak was caused by his own negligence.—Mann Bros. v. City of Henderson, Ky., 156 S. W. 1063.

107.——Prescription.—Where the holder of the dominant estate voluntarily changed the course of natural drainage, so that the water ceased to flow over the servient estate, and such condition existed without interruption for over 20 years, it raised a prescriptive right in favor of the servient tenement.—Zerban v. Eidmann, Ill., 101 N. E. 925.

108. **Wills**—Undue Influence.—It is not sufficient, in order to set aside a will for undue influence, to show that there was an opportunity to exercise undue influence; but there must be some evidence that it was actually exercised.—Crump v. Chenault, Ky., 156 S. W. 1053.